



# COMMONWEALTH of VIRGINIA

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## The Fraud and Abuse Whistle Blower Protection Act Program Procedures Manual August 10, 2011

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# The Fraud and Abuse Whistle Blower Protection Act Program

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## I. Introduction

The overall goal of the Fraud and Abuse Whistle Blower Protection Act (WBPA) program is to encourage, reward, and protect from retaliation executive branch employees for reporting instances of wrongdoing or abuse committed by their employing agency, other state agencies, or independent contractors of state agencies.

## II. Authority

The Fraud and Abuse Whistle Blower Protection Act is found in sections 2.2-3009 through 2.2-3014 of the Code of Virginia.

## III. Definitions and Terms

- A. **Abuse.** Abuse means an employer's or employee's conduct or omissions that result in substantial misuse, destruction, waste, or loss of funds or resources belonging to or derived from federal, state, or local government sources.
- B. **Division of State Internal Audit (DSIA).** The DSIA is a division of the Department of Accounts and is charged with promulgating regulations for the proper administration of the WBPA Fund including determining the eligibility requirements and procedures for filing claims.
- C. **Eligible employee.** An eligible employee is any person who is regularly employed full time on either a salaried or wage basis by an executive branch state agency or institution.
- D. **Employee Suggestion Program (ESP).** This program, which is managed by the Department of Human Resource Management, encourages, recognizes, and rewards state employees for any suggestions that they propose and that are adopted that lead to a reduction in state expenditures, an improvement in productivity or quality of state services, an increase in state revenues, or improved or safer working conditions. This program is different from the WBPA program in that it involves a programmatic or procedural change prospectively to increase efficiency, productivity, quality of service, or customer satisfaction. The WBPA program focuses on eliminating fraud and abuse within state agencies and is a corrective action to end wrongdoing.
- E. **Fraud.** Fraud is the intentional deception perpetrated by an individual or individuals or an organization or organizations, either internal or external to state government, which could result in a tangible or intangible benefit to themselves, others, or the Commonwealth or could cause detriment to others or the Commonwealth. Fraud includes a false representation of a matter of fact, whether by words or by conduct, by false or misleading

statements, or by concealment of that which should have been disclosed, which deceives and is intended to deceive.

- F. **Hotline coordinator.** For agencies that have no Internal Audit Department, agency heads designate a high-level individual within the agency who is responsible for conducting investigations or for coordinating the DSIA investigations and resolution of the allegations involving the respective agency. This individual is the hotline coordinator and will serve as the WBPA program coordinator as well. This individual should have some background or training in conducting administrative investigations. The Internal Audit Director serves as the WBPA program coordinator for agencies that have an Internal Audit Department.
- G. **Hotline program.** This program was implemented on October 1, 1992 as the result of an Executive Order. The major objectives of the hotline are to provide state employees with a confidential vehicle to report suspected occurrences of fraud, waste, and abuse in state agencies and institutions, to investigate such occurrences to determine their validity and, if valid, to make appropriate recommendations to eliminate these occurrences.
- H. **Internal Audit Director.** This individual is the head of the agency's internal audit program and receives the WBPA allegations from the DSIA for investigation, except in those cases where the agency head, senior official, or a member of the internal audit staff may be a subject of the investigation. The DSIA staff perform those investigations.
- I. **Reward.** This is the amount of money the whistle blower shall receive if the allegation is substantiated and results in a savings of at least \$10,000 to the Commonwealth. The amount of the reward is one percent of the total amount of savings realized by the Commonwealth.
- J. **Savings.** Savings is defined as the prior costs incurred by the Commonwealth due to the acts of fraud or abuse that were reported and substantiated. The whistleblower reward will generally be calculated based on the total savings (prior costs incurred) related to the acts of fraud or abuse that were reported and substantiated.
- K. **Screening process.** This is a two step process in which all allegations are reviewed to ensure first that the reporter of the allegation is an executive branch state employee and second that the allegation falls within the scope of the WBPA program.
- L. **State agency.** State agency means any agency, institution, board, bureau, commission, council, or instrumentality of state government in the executive branch listed in the appropriation act.
- M. **Whistle blower.** A whistle blower is an executive branch state employee who witnesses or has evidence of wrongdoing or abuse and who makes a good faith, open and public, report of the wrongdoing or abuse to one of the employee's superiors, an agent of the employer, or an appropriate authority.

- N. **Wrongdoing.** Wrongdoing is a violation, which is not of a merely technical or minimal nature, of a federal or state law or regulation or a formally adopted code of conduct or ethics of a professional organization designed to protect the interests of the public or employee.

#### IV. **WBPA Program Organization and Responsibilities**

- A. **The Division of State Internal Audit (DSIA).** The DSIA is responsible for notifying agencies of the program; receiving and processing calls, letters, and electronic media reporting fraud and abuse and evaluating investigative reports; setting up the reward fund; paying the reward monies to the whistle blowers; and reporting the activities of the program annually.
- B. **Agency heads.** Agency heads that do not have an internal auditing department are responsible for designating a high-level individual within the agency to conduct WBPA investigations or to coordinate the DSIA's WBPA investigations and the resolution of WBPA allegations involving the respective agency. Because executive branch agency heads have already designated certain individuals to serve as hotline coordinators, these individuals will serve as the WBPA program coordinators as well. The Internal Audit Director serves as the WBPA program coordinator for agencies that have an Internal Audit Department. Because of the sensitivity and nature of allegations, the DSIA recommends the WBPA coordinator be the agency head, deputy, or a senior member of the management team in order to ensure timeliness and maximum access to records, personnel, and physical properties during investigations.
- C. **Internal Audit Directors and WBPA program coordinators.** WBPA allegations are forwarded by the DSIA to the Internal Audit Directors and WBPA program coordinators for investigation. These individuals are responsible for conducting these investigations on behalf of the DSIA. Whistle blower investigations are conducted in accordance with the State Employee Fraud, Waste, and Abuse Hotline Policies and Procedures manual with one exception: The name of the whistle blower is known and therefore the requirement to keep this person's name confidential is not applicable.

#### V. **Specific Procedures**

- A. **Notification**
  - 1. The State Comptroller sends out a letter to executive branch agency heads notifying them of the WBPA program.

2. The DSIA advertises the program through statewide e-mail to executive branch employees. The letter will explain that employees will have to choose whether they are reporting the issue under the hotline program or under the Whistle Blower program. The major difference is employees can remain anonymous under the Hotline program whereas they must identify themselves under the Whistle Blower program. Also, as indicated below, “whistle blowers” are eligible for a reward in certain circumstances.

**B. Receipt of Allegations (various means of notification)**

1. If a telephone call is received, the DSIA staff will determine if the caller is reporting the concern under the Hotline program or the WBPA program.
2. If the allegation is received via mail, email, or fax, the DSIA staff will treat it as a Hotline case when no name or contact information is provided.

**C. Processing of Allegations**

1. Telephone, written, and electronic allegations will undergo a two step screening process, similar to the screening process that Hotline program allegations undergo.

Step one of the process is to determine if the caller, writer, or sender is an executive branch employee. If so, the allegation proceeds to step two of the screening process. If not, the caller is directed to the appropriate agency or organization that can address the concern, if possible.

Step two of the screening process is to determine if the allegation falls within the scope of the WBPA program, i.e. it relates to fraud or abuse, enough details have been provided to launch an investigation, the concern hasn't been reported previously (within the last year), and the materiality and seriousness warrant an investigation.

Allegations of waste, which do not fall within the scope of the WPBA program, will be handled under the Fraud, Waste, and Abuse hotline program or under the Employee Suggestion Program.

2. Qualifying allegations (allegations that have passed through the two-step screening process) are written up in the same manner as are valid hotline allegations. These written allegation reports are forwarded to the applicable agency's Internal Audit Director or previously designated WBPA program coordinator for the performance of an investigation. The allegation reports clearly identify under which program the investigation is to be

conducted. As with the hotline investigations, the DSIA performs WBPA program investigations that involve Governor Appointees, Internal Audit Directors, and in instances where there is a conflict of interest involving Internal Audit Directors or WBPA program coordinators.

3. Internal Audit Directors and WBPA program coordinators are allowed sixty days to complete the investigations, although extensions may be granted upon request.
4. The DSIA staff record summary information from the WBPA program calls in the Hotline database under a specific "type" to keep the information separate from hotline program information.

#### **D. Evaluation of Reports**

1. The DSIA staff review reports received from Internal Audit Directors or WBPA program coordinators and determine if they adequately address the allegation(s).
2. The DSIA also determine if savings of at least \$10,000 have been identified based on information provided in the report. The DSIA staff will calculate the time period to which the savings relate. For example, if a fraud is uncovered on August 31, 2010 and the investigation revealed that the fraud began on October 10, 2009, then the monies stolen during that time period would serve as the basis for this reward.

#### **E. Setting Up of the Reward Fund for Payment of Future Rewards**

1. Under the WBPA program, a non-reverting fund called the Fraud and Abuse Whistle Blower Reward Fund (Fund) shall be established on the books of the Comptroller. Monies shall be transferred to the Fund from authorized sources.
2. Interest earned on monies in the Fund and any monies remaining in the Fund at the end of the fiscal year shall remain in the Fund and not revert to the General Fund.

#### **F. Payments to the Whistle Blower**

1. Within 7 days of closing an investigation where savings of at least \$10,000 are identified, DSIA staff submits a request to the State Comptroller for approval to make a payment under the WBPA program. The request will include the name and address of the whistle blower to be paid and the amount. Documentation supporting the amount of the payment will be provided to the State Comptroller as well.
2. Once approved, the State Comptroller shall forward the request to the Accounts Payable section of the Department of Accounts (DOA) which processes the payment.

3. All payments made via the Accounts Payable section will be reported on the whistle blower's W-2 at year-end. DSIA staff will notify the affected agency to process an appropriate non-paid, taxable special pay into the applicable payroll system to update (increase) the taxable fields for the whistle blower by the amount of the reward.
4. The DSIA staff shall follow up to ensure that the request was processed and that the check was sent to the whistle blower for the proper amount.

**G. Reporting the Program Activity**

1. When DSIA staff prepares the annual Hotline Statistics Report at the end of the fiscal year, the WBPA program activity will be included in the report but will be broken out separately.
2. A copy of the report will be provided to the Governor's Office, the Secretary of Finance, and the State Comptroller.